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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

VERNON UNSWORTH,
Plaintiff,
vs.
ELON MUSK,
Defendant.

Case No. 2:18-cv-08048

Judge: Hon. Stephen V. Wilson

**DEFENDANT ELON MUSK'S
STATEMENT OF
UNCONTROVERTED FACTS AND
CONCLUSIONS OF LAW IN
SUPPORT OF HIS MOTION FOR
SUMMARY JUDGMENT**

Complaint Filed: September 17, 2018
Trial Date: December 2, 2019

Hearing Date: October 28, 2019
Time: 1:30 p.m.
Courtroom: 10A

Defendant Elon Musk respectfully submit this Statement of Uncontroverted Facts and Conclusions of Law in support of his Notice of Motion and Motion for Summary Judgment pursuant to Local Rule 56-1.

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UNCONTROVERTED FACTS

A. The Thai Cave Rescue and Plaintiff's Role

Elon Musk's Uncontroverted Facts	Supporting Evidence
1. On June 23, 2018, members of a Thai youth soccer team, and one of their coaches went missing in the Tham Luang Cave System in the Chiang Rai province of Thailand.	Dkt. 1, Complaint (“Compl.”) ¶ 23.
2. Within days of the soccer team going missing, an international search and rescue mission to locate the team was undertaken.	Compl. ¶¶ 2, 3, 23-61.
3. The story of the stranded soccer team and the efforts to rescue them captured the attention of the world.	<i>Id.</i>
4. On June 24, 2018, Plaintiff Vernon Unsworth (“Mr. Unsworth”) traveled to the cave system after learning that the soccer team had gone missing.	Compl. ¶¶ 29-30.
5. Mr. Unsworth participated in efforts to rescue the soccer team (the “Thai Cave Rescue”)	Compl. ¶¶ 2, 31-41.
6. On or about June 29, 2018, Mr. Unsworth was interviewed by BBC-Thai regarding the Thai Cave Rescue.	Declaration of Michael T. Lifrak (“Lifrak Decl.”), ¶ 3.

1	7. On July 3, 2018, <i>The New</i> <i>York Times</i> published an article titled “Thailand Cave Rescue Turns to How to Extract Trapped Soccer Team,” which quoted Mr. Unsworth.	Lifrak Decl. Ex. 3.
6	8. On July 4, 2018, <i>The Daily</i> <i>Mail</i> published an article about Mr. Unsworth titled “British caver is hailed a ‘magician’ after convincing Thai officials to bring in heroic UK divers who found stranded schoolboys, aided by his knowledge of the tunnels.”	Lifrak Decl. Ex. 4.
13	9. On July 13, 2018, CNN published an article titled “British diver recalls Thai cave rescue: ‘Are we heroes? No,’” which quoted Mr. Unsworth and described his involvement in the rescue.	Lifrak Decl. Ex. 5.
18	10. On July 15, 2018, <i>The</i> <i>Sunday Times</i> published an article titled “Exclusive interview with cave rescue hero Vernon Unsworth: ‘If the Brits hadn’t been called in, it would have been too late,’” which quoted Mr. Unsworth and described his involvement in the rescue.	Lifrak Decl. Ex. 6.

1	11. On December 3, 2018, in its December “Men of the Year” edition, <i>GQ</i> <i>Magazine</i> published an article titled “Miracle At Tham Luang” that described Mr. Unsworth’s involvement in the Thai Cave Rescue.	Lifrak Decl. Ex. 7.
7	12. Mr. Unsworth testified that at the Thai Cave Rescue site, his “face was very well known to reporters.”	Lifrak Decl. Ex. 1 (Unsworth Depo. at 292:11-18).
10	13. In June 2019, Mr. Unsworth was titled a Member of the Most Excellent Order of the British Empire (MBE).	Lifrak Decl. Ex. 1 (Unsworth Depo. 102:2-15); Ex. 9 (Rog Resp.) at 7.
13	14. Mr. Unsworth participated in two National Geographic documentaries titled “The Cave” and “Drain the Oceans.”	Lifrak Decl. Ex. 9 (Rog Resp.) at 8.
16	15. Mr. Unsworth contributed to three books about the Thai Cave Rescue: <i>The Boys in the Cave</i> by Matt Gutman, <i>The Cave</i> by Liam Cochrane, and an untitled and not yet released children’s book by Christina Soontornvat.	Lifrak Decl. Ex. 9 (Rog Resp.) at 6.
22	16. In December 2018, Mr. Unsworth gave an interview to the British Broadcasting Service (“BBC”) about his involvement in the Thai Cave Rescue.	Lifrak Decl. Ex. 9 (Rog Resp.) at 5.

1 2 3 4	17. In June 2019, Mr. Unsworth gave an interview to the BBC Beyond Today podcast about his involvement in the Thai Cave Rescue.	Lifrak Decl. Ex. 9 (Rog Resp.) at 5.
5 6 7 8 9 10	18. After the Thai Cave Rescue concluded, Mr. Unsworth communicated with members of the media including journalist Phillip Sherwell (who writes for <i>The Sunday Times</i>) and ABC News Correspondent Matt Gutman.	Lifrak Decl. Exs. 10-12.
11 12 13 14 15 16 17 18 19	19. Mr. Unsworth has given a number of presentations about the Thai Cave Rescue, including presentations to NIST International School of Bangkok, Shresbury International School of Bangkok, British Club Bangkok, ASEAN Foreign Ministers, ASEAN Ministers of Finance, ASEAN Civil Servants, SCB Bank Officials.	Lifrak Decl. Ex. 9 (Rog Resp.) at 7-8.
20 21 22	20. Mr. Unsworth has spoken to agents about film rights regarding the Thai Cave Rescue.	Lifrak Decl. Ex. 13.

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2 **B. The Public Debate Over the Cave Rescue**

3 **and Mr. Musk's Involvement**

4 5 6 7 8 9 10 11 12 13 14 15	21. On July 13, 2018, the <i>Washington Post</i> published an article entitled “Time is running out: Inside the treacherous rescue of boys trapped in a Thai cave.” Among other things, the article described how “[i]deas [about how to rescue the team] came from every corner: a network of corrugated pipes the boys could crawl through; floating them out in body bags. Billionaire entrepreneur Elon Musk began construction of a custom kid-size minisub.”	Lifrak Decl. Ex. 20.
16 17 18 19 20 21 22 23 24 25 26 27 28	22. On July 7, 2018, <i>The New York Times</i> published an article titled “Elon Musk Thinks a Mini-Submarine Could Help in Thai Cave Rescue.” Among other things, it said: • “Engineers from companies led by Elon Musk, the billionaire known for outside-the-box ideas like his aspiration to colonize Mars, were en route to Thailand on Saturday to offer their expertise to help rescue 12 boys and their soccer coach	Lifrak Decl. Ex. 14.

1 from the Tham Luang cave in
2 northern Thailand.”

3 • “On Twitter, Mr. Musk has mused
4 about potential inventions that
5 could help the trapped soccer team,
6 including a miniature submarine
7 made from part of a SpaceX
8 rocket.”

9 • “Edgar Choueiri, a professor at
10 Princeton University who
11 specializes in rocket research, said
12 Mr. Musk’s submarine idea
13 suggested that he imagined the
14 Falcon rocket’s hollow transfer
15 tube — which helps move liquid
16 oxygen to fuel the rocket’s engine
17 — would be the appropriate size to
18 transfer the boys out of the flooded
19 cave.”

20 • “‘I would never bet against Elon
21 Musk,’ Mr. Choueiri said.”

22 • “Others were not as confident.
23 Greg Moore, a regional director for
24 the National Cave Rescue
25 Commission, said most rescues
26 prompt a series of newfangled
27 ideas that are not necessarily
28 practical. Mr. Musk’s submarine

<p>would likely have trouble fitting through the narrowest passageways, he said.”</p> <ul style="list-style-type: none"> • “This is not Mr. Musk’s first foray into emergency assistance. In the wake of Hurricane Maria in Puerto Rico, which resulted in devastating power outages, Tesla provided batteries to help keep the lights on.” 	
<p>23. On July 10, 2018, <i>The New York Times</i> published an article titled “Elon Musk Defends His Rejected Mini-Sub Plan for Thai Cave.” Among other things, it said:</p> <ul style="list-style-type: none"> • “As the world watched rescuers struggle to save 12 boys and their soccer coach trapped in a cave in northern Thailand, the tech billionaire Elon Musk dreamed up a ‘kid-size’ submarine to help. It turns out they didn’t need it. So he left it there, ‘in case it may be useful in the future,’ he said on Twitter.” • “On Tuesday, the head of the search operation, Narongsak 	<p>Lifrak Decl. Ex. 15.</p>

1 Osottanakorn, until recently the
2 provincial governor, rejected the
3 notion that Mr. Musk's custom-
4 made submersible was suitable for
5 the extraction. 'I assure you that
6 the equipment he brought to help
7 us is not practical for our mission,'
8 Mr. Narongsak said. 'Even though
9 the equipment has state of the art
10 technology, it does not fit our
11 mission in the cave.'"

12 • "In his tweets amid the rescue, Mr.
13 Musk presented his own evidence
14 that team leaders had welcomed his
15 help. He said of Mr. Narongsak:
16 'The former Thai provincial
17 governor (described inaccurately as
18 'rescue chief') is not the subject
19 matter expert.' He said the expert
20 was Richard Stanton, one of the
21 first two British cave divers to
22 reach the soccer team, and Mr.
23 Musk shared an email in which Mr.
24 Stanton had asked him to 'please
25 keep working on the capsule
26 details.' But a spokesman for Mr.
27 Stanton said Tuesday that the cave

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1 2	proved to be too narrow for the mini-submarine.”	
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>24. On July 10, 2018, the BBC published an article titled “Why was Elon Musk at the Thai cave rescue?” Among other things, the article said:</p> <ul style="list-style-type: none"> • “The SpaceX and Tesla chief posted on social media that he had visited the operation's command centre, where he said he had left a mini-submarine that had been designed to carry a trapped football team to safety. The head of the rescue mission thanked Mr Musk for his offer. But he said the sub could not be used.” • “The billionaire has form with making eye-catching humanitarian acts.” • “Last year, he was thanked by Puerto Rico's governor for setting up a solar panel and battery system to provide power to a children's hospital in San Juan after it was hit by a hurricane.” • “But while his most recent intervention has won him praise from some, others have questioned 	Lifrak Decl. Ex. 16.

1	his motivations and suggested he	
2	might even have been a	
3	distraction.”	
4	• ““Elon Musk is well known to have	
5	an eye for the headlines, but to be	
6	fair he only became involved after	
7	a message from one of his army of	
8	fans on Twitter,’ commented the	
9	BBC's technology correspondent	
10	Rory Cellan-Jones.”	
11	• ““The fact that his company's space	
12	technology and its much vaunted	
13	tunnelling skills proved irrelevant	
14	to the operation is a reminder that	
15	sometimes this tech superhero	
16	doesn't quite match up to the Iron	
17	Man of his fans' dreams.””	

18	25. On July 10, 2018, the tech	Lifrak Decl. Ex. 17.
19	publication Gizmodo published an article	
20	titl	
21	“Is Elon Musk Serious?” Among	
22	other things, the article said:	
23	• “A kid-sized submarine arrived in	
24	northern Thailand, just a few hours	
25	before the final four members of a	
26	youth soccer team and their coach	
27	were rescued from the flooded	
28	Tham Luang cave complex. Elon	

1 Musk, whose minions had built the
2 sub out of SpaceX rocket materials
3 for the sole purpose of moving the
4 trapped boys to safety, delivered
5 the mini sub himself and
6 announced his presence in a tweet
7 to his 22 million followers.

8 Meanwhile, the rescue chief said
9 that the kid-sized submarine was
10 ‘not practical’ for the boys, as
11 thousands heaped praise onto Musk
12 for doing—well—it’s unclear if the
13 bombastic billionaire really did
14 anything helpful. Which makes
15 you wonder: is Elon Musk serious
16 with this shit?”

17 • “The short answer to that question
18 is no. Musk has a long track record
19 of promising to solve huge
20 problems and then either missing
21 deadlines or falling short. Along
22 the way, he’s also built up a cult of
23 personality that leads fans to
24 compare him to comic book
25 superheroes. So even if Musk isn’t
26 really serious about his ridiculous,
27 buzz-building projects, plenty of

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1 people still think he is. We need to
2 stop that.”

3 • “The weird difference between
4 some of Musk’s famous vaporiffic
5 moonshots and the kid-sized
6 submarine is that Musk actually
7 built the sub. But it’s nothing more
8 than a useless stunt. Not only did
9 Musk show up too late to help, he
10 showed up with a tool that wasn’t
11 even helpful. As it seemed
12 increasingly obvious that the sub
13 wouldn’t actually rescue any boys
14 from the cave, Musk later tweeted
15 that it ‘could also be used as an
16 escape pod in space.’ So at least
17 there’s that non-existent
18 contingency.”

19 • “What’s most frustrating about
20 Musk’s stunts is how everything
21 feels a little bit like a grift. Like,
22 every time, you have to wonder
23 what Musk is really selling, and as
24 time goes on, those sales pitches
25 become more convoluted. The
26 Mars thing was a great way to
27 build publicity for SpaceX. The

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1 Hyperloop fiasco seems like some
 2 sort of weird ad for Tesla and the
 3 future of transportation. The
 4 Boring Company, complete with
 5 promotional flamethrowers, is a
 6 different version of a Tesla ad. But
 7 with this kid-sized submarine, it's
 8 not immediately clear what Musk
 9 is shilling.”

10 26. On July 11, 2018, *The New*
 11 *York Daily News* published an article titled
 12 “Elon Musk hits back at criticism over
 13 inserting himself in Thai boys cave
 14 rescue.” The article said, among other
 15 things:

- 16 • “Billionaire businessman Elon
 17 Musk has defended against
 18 allegations that he needlessly
 19 inserted himself into the plight of
 20 the Thai soccer team stuck in a
 21 flooded cave. Narongsak
 22 Osottanakorn, who led the rescue
 23 effort that freed the 12 boys and
 24 their coach on Tuesday, said
 25 Musk’s offer of a tiny, boy-sized
 26 submarine was ‘not practical’ to
 27 use at the Tham Luang cave.”

28 Lifrak Decl. Ex. 18.

1 • “Musk had been following the
 2 boys’ calamity, which started on
 3 June 23, and had a team of his
 4 engineers make the sub. He
 5 posted on Twitter from the cave
 6 on Monday, and said he was
 7 leaving his creation there ‘in case
 8 it may be useful in the future.’”
 9 • “Some internet commentators
 10 took Musk’s motives as purely
 11 self-focused, given the flood of
 12 media attention to the Wild Boars
 13 team and international rescue
 14 effort. ‘This reaction has shaken
 15 my opinion of many people. We
 16 were asked to create a backup
 17 option & worked hard to do so.
 18 Checked with dive team many
 19 times to confirm it was
 20 worthwhile. Now it’s there for
 21 anyone who needs it in future.
 22 Something’s messed up if this is
 23 not a good thing,’ he posted on
 24 Twitter Wednesday.”

25 27. On July 12, 2018, *The New*
 26 *York Times* published an article titled
 27 “Thai Navy May Put Elon Musk’s Mini-

Lifrak Decl. Ex. 19.

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1 Submarine to Use. One Day.” The article
2 said, among other things:

- 3 • “Thailand may have use for Elon
4 Musk’s ‘kid-sized’ submarine after
5 all.”
- 6 • The tech billionaire had designed
7 the miniature submarine, built with
8 rocket parts, to help save the 12
9 boys and their 25-year-old soccer
10 coach trapped in a flooded cave in
11 northern Thailand. On Tuesday,
12 rescuers pulled off an improbable
13 feat when they finished removing
14 all 13 people from the Tham Luang
15 Cave.”
- 16 • “The chief of the rescue mission
17 had called the device ‘not
18 practical’ for the operation, which
19 required squeezing through narrow
20 passageways in the cave, but a
21 Thai military official said the mini-
22 submarine could be useful for
23 future rescue missions.”
- 24 • “Maj. Gen. Chalongchai
25 Chaiyakham, the deputy
26 commander to Thailand’s Third
27 Army, said Wednesday that the

	<p>1 mini-submarine would be 2 appropriate for use in open water 3 and that he had heard the 4 technology would be given to the 5 Thai Navy SEAL team.”</p> <ul style="list-style-type: none"> 6 • “A Boring Company spokesman 7 said the SpaceX engineers met 8 with members of the Thai Navy on 9 Wednesday and that the last 10 employees left Thailand on 11 Thursday morning. Mr. Musk 12 responded to the photos of the 13 training session on Twitter, saying 14 the engineers were also getting 15 feedback from British divers on 16 how the technology could be 17 improved.” 	
	<p>18 28. On July 10, 2018, in the BBC 19 article <i>Why was Elon Musk at the Thai</i> 20 <i>cave rescue?</i> the former Provincial 21 Governor of Chiang Rai was quoted, 22 claiming that Mr. Musk’s mini-submarine 23 was “not practical with our mission” to 24 rescue the soccer team.</p>	Lifrak Decl. Ex. 16.
	<p>25 29. On July 10, 2018, Mr. Musk 26 responded to governor’s statement on 27 Twitter.</p>	Declaration of Elon Musk (“Musk Decl.”) Musk Decl.¶ 18, Ex. E.

1	30. Mr. Musk donated the mini-	Lifrak Decl. Ex. 2 (Musk Depo.
2	submarine to the Thai Navy to be used in	121:16-22); Musk Decl. ¶ 15.
3	future rescue missions.	
4	31. Mr. Musk is the founder and	Musk Decl. ¶ 1.
5	CEO of Tesla Inc., a publicly traded	
6	company.	
7	 	
8	C. <u>Without Provocation, Mr. Unsworth Attacks Musk on CNN</u>	
9	32. On or about July 13, 2018,	Compl. ¶¶ 70-71; Lifrak Decl. Ex. 1
10	Mr. Unsworth gave an interview to CNN	(Unsworth Depo. 213:22-214:5); Ex.
11	International.	22.
12	33. Before giving his interview to	Lifrak Decl. Ex. 1 (Unsworth Depo.
13	CNN International on July 13, 2018, Mr.	214:17-218:10).
14	Unsworth watched a video of the mini-	
15	submarine constructed by Mr. Musk and	
16	his team.	

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	<p>34. In his interview, in response to a question asking what his “thoughts on [Mr. Musk’s] idea was,” Mr. Unsworth stated that “[Mr. Musk] can stick his submarine where it hurts. It just had absolutely no chance of working. He had no conception of what the cave passage was like. The submarine, I believe, was about 5 foot 6 long, rigid, so it wouldn’t have gone round corners or round any obstacles. It wouldn’t have made the first fifty meters into the cave from the dive start point. Just a PR stunt.” He also stated that “[Mr. Musk] was asked to leave [the rescue site] very quickly.”</p>	Lifrak Decl. Ex. 21.
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	<p>D. <u>Mr. Musk’s July 15, 2018 Tweets and Subsequent Apology</u></p>	
	<p>35. On or about July 15, 2018, Mr. Musk saw video of Mr. Unsworth’s CNN International interview.</p>	Lifrak Decl. Ex. 2 (Musk Depo. 26:13-27:15); Musk Decl. ¶ 19.

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1 36. After watching the video, Mr. 2 Musk googled Mr. Unsworth and learned 3 that he was an older white man from the 4 United Kingdom who lived in an area of 5 Thailand known for child prostitution and 6 sex trafficking.	Lifrak Decl. Ex. 2 (Musk Depo. 25:5- 19; 42:18-43:8); Musk Decl. ¶ 22.
7 37. In response to Mr. 8 Unsworth's CNN International interview, 9 Mr. Musk posted a first tweet on July 15, 10 2018 that read: "Never saw this British 11 expat guy who lives in Thailand (sus) at 12 any point when we were in the caves. 13 Only people in sight were the Thai 14 navy/army guys, who were great. Thai 15 navy seals escorted us in – total opposite 16 of wanting us to leave."	Musk Decl. ¶ 24, Ex. F.
17 38. By referring to Mr. Unsworth 18 as "sus," Mr. Musk did not intend to 19 convey any specific facts capable of being 20 proven true or false, instead he sought to 21 convey that Mr. Unsworth was "just a 22 weird guy...looking for press."	Lifrak Decl. Ex. 2 (Musk Depo. 154:12-24); Musk Decl. ¶ 25.
23 39. Mr. Unsworth admitted in 24 deposition that there was nothing about 25 him in Mr. Musk's first alleged 26 defamatory tweet posted on July 15, 2018 27 that was false.	Lifrak Decl. Ex. 1 (Unsworth Depo. 260:6-15).

	<p>1 40. In response to Mr. 2 Unsworth's CNN International interview, 3 Mr. Musk posted a second tweet on July 4 15, 2018 that read: "Water level was 5 actually very low & still (not flowing) – 6 you could literally have swum to Cave 5 7 with no gear, which is obv how the kids 8 got in. If not true, then I challenge this 9 dude to show final rescue video. Huge 10 credit to pump & generator team. Unsung 11 heroes here."</p>	Musk Decl. ¶ 26, Ex. G.
	<p>12 41. Mr. Unsworth admitted in 13 deposition that there was nothing about 14 him in Mr. Musk's second alleged 15 defamatory tweet posted on July 15, 2018 16 that was false.</p>	Lifrak Decl. Ex. 1 (Unsworth Depo. 263:5-264:9).
	<p>17 42. In response to Mr. 18 Unsworth's CNN International interview, 19 Mr. Musk posted a third tweet on July 15, 20 2018 that read: "You know what, don't 21 bother showing the video. We will make 22 one of the mini-sub/pod going all the way 23 to Cave 5 no problem. Sorry pedo guy, 24 you really did ask for it."</p>	Musk Decl. ¶ 27, Ex. H.

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1 43. The term “pedo guy” was a 2 common insult used during Mr. Musk’s 3 youth in South Africa, which he 4 understood was synonymous with “creepy 5 old man” and aimed at insulting one’s 6 appearance and demeanor.	Lifrak Decl. Ex. 2 (Musk Depo. 51:21-52:17); Musk Decl. ¶ 28.
7 44. The term “pedo guy” as used 8 and understood by Mr. Musk is not an 9 accusation of acts of pedophilia.	<i>Id.</i>
10 45. Mr. Musk did not intend to 11 frame the third tweet to imply that Mr. 12 Unsworth undertook acts of pedophilia, 13 and instead meant to suggest that Mr. 14 Unsworth “seem[ed] like a creepy old 15 man.”	Lifrak Decl. Ex. 2 (Musk Depo. 51:21-52:17; 198:3-10); Musk Decl. ¶ 29.
16 46. The definition of pedophile, 17 as Mr. Musk understood the term, includes 18 adults who “derive[] sexual gratification 19 from sexual fantasies...involving a child.”	Lifrak Decl. Ex. 2 (Musk Depo. 38:12-20); Compl. ¶ 78.
20 47. In response to a tweet 21 regarding Mr. Musk’s tweets, Mr. Musk 22 posted a fourth tweet on July 15, 2018 that 23 read: “bet ya a signed dollar its true.”	Musk Decl. ¶ 30, Ex. I.

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1 2 3 4 5	48. Mr. Musk testified that the fourth tweet was a “flippant comment” meant to convey that he “was not certain” about the prior tweets and found Mr. Unsworth “suspicious.”	Lifrak Decl. Ex. 2 (Musk Depo. 141:2-22, 140:16-25).
6 7	49. Mr. Musk deleted all four tweets within hours of their publication.	Musk Decl. ¶ 31.
8 9 10 11 12 13 14 15 16 17 18 19 20 21	50. On July 18, 2018, Mr. Musk posted two tweets that read: “As this well-written article suggests, my words were spoken in anger after Mr. Unsworth said several untruths & suggested I engage in a sexual act with the mini-sub, which had been built as an act of kindness & according to specifications from the dive team leader,” and “Nonetheless, his actions against me do not justify my actions against him, and for that I apologize to Mr. Unsworth and to the companies I represent as leader. The fault is mine and mine alone.”	Musk Decl. ¶ 32, Ex J.

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1	E. <u>Mr. Musk Retains an Investigator who Reports On Mr. Unsworth.</u>	
2	51. On or around August 15, 3 2018, Jared Birchall, the president of Mr. 4 Musk's home office, retained James 5 Howard, a private investigator and 6 president of the investigation firm Jupiter 7 Military & Tactical Systems, to conduct 8 an investigation of Mr. Unsworth in the 9 United Kingdom and Thailand on Mr. 10 Musk's behalf.	Declaration of Jared Birchall ("Birchall Decl."), ¶ 4; Birchall Decl. Ex. A.
11	52. Mr. Howard represented to 12 Mr. Birchall that he served in the United 13 Kingdom Special Forces for eleven years 14 and the United Kingdom Security Service 15 (commonly known as MI5) for two years 16 and had experience performing sensitive 17 work for high profile clients, including 18 billionaires Paul Allen and George Soros.	Birchall Decl. ¶ 5, Ex. A.
19	53. Mr. Birchall told Mr. Howard 20 in writing that he and Mr. Musk "aren't 21 looking to frame anyone. If there is 22 definitively no smoking gun, then let's get 23 the information necessary to make that 24 determination and it is what it is."	Birchall Decl. ¶ 13, Ex. D.

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1 2 3 4	54. Through one of Mr. Musk's corporations, Mr. Birchall ultimately paid Mr. Howard more than \$50,000 to perform the investigation.	Birchall Decl. ¶ 8.
5 6 7 8 9 10 11 12	55. On August 17, 2018, Mr. Howard wrote in an email to Mr. Birchall that "there is indeed an unpleasant undertone to some of his lifestyle choices" and "[t]here is no question that [Mr. Unsworth] 'associates' locally with Europeans who enjoy 'Thai comforts' that are not acceptable in a developed society."	Birchall Decl. ¶ 11, Ex. C.
13 14 15 16 17 18 19 20 21	56. On telephone calls, including before August 27, 2018, Mr. Howard described a Thai news article that quoted Mr. Unsworth's Thai wife and reported that Mr. Unsworth married his wife when she was 18 or 19 years old, but that they met seven years earlier, which would imply that she was eleven or twelve years old at the time.	Birchall Decl. ¶ 12.
22 23 24 25 26 27 28	57. Within a day of receiving the information, Mr. Birchall orally reported to Mr. Musk Mr. Howard's description of a Thai news article that quoted Mr. Unsworth's Thai wife and reported that Mr. Unsworth married his wife when she was 18 or 19 years old, but that they met	Birchall Decl. ¶ 12; Musk Decl. ¶ 35.

1	seven years earlier, which would imply that she was eleven or twelve years old at the time.	
4	58. On August 27, 2018, Mr. Howard wrote to Mr. Birchall that Mr. Unsworth "is 63 years old. His wife we believe is 30 which would have put her at 18/19 when they first met. The target would have been 52 yrs old at the time. This is NOT verified but will be ASAP."	Birchall Decl. ¶ 14, Ex. D.
11	59. On August 27, 2018, Mr. Howard also wrote to Mr. Birchall that Mr. Unsworth has been traveling to Thailand since the late 1980s and that Mr. Unsworth's "behaviour is at best described as a 'Manther' – UK slang for the opposite of Cougar."	<i>Id.</i>
18	60. Before August 28, 2018, Mr. Birchall orally relayed to Mr. Musk the contents of Mr. Howard's phone calls and his August 17 and August 27, 2018 emails, including Mr. Howard's reports that Mr. Unsworth associated with Europeans who engage in improper sexual conduct in Thailand, and has been traveling to Thailand since the 1980s.	Birchall Decl. ¶ 15; Musk Decl. ¶ 35.

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1 61. After Mr. Howard sent the
 2 August 27, 2018 email to Mr. Birchall, he
 3 again represented on a phone call to Mr.
 4 Birchall that there was evidence
 5 suggesting that Mr. Unsworth met and
 6 began a relationship with his wife when
 7 she was eleven or twelve. Mr. Birchall
 8 reported this information to Mr. Musk.

9

10 Birchall Decl. ¶ 16.

F. Mr. Musk's August 28, 2018 Tweet

11 62. On August 28, 2018, in
 12 response to a tweet from Drew Olanoff, a
 13 reporter for TechCrunch, that Mr. Musk's
 14 "dedication to facts and truth would have
 15 been wonderful if applied to that time
 16 when you called someone apedo," Mr.
 17 Musk tweeted "You don't think it's
 18 strange he hasn't sued me? He was
 19 offered free legal services."

Musk Decl. ¶ 38, Ex. K.

20 63. At the time he sent the
 21 August 28, 2018 tweet, Mr. Musk had
 22 knowledge of Mr. Howard's initial
 23 findings, as they were relayed to him by
 24 Mr. Birchall, including Mr. Howard's
 25 reports that that Mr. Unsworth associated
 26 with Europeans who engage in improper
 27 sexual conduct in Thailand, has been

Musk Decl. ¶ 39.

28

1 traveling to Thailand since the 1980s, and
 2 that there was a report Mr. Unsworth met
 3 and began a relationship with his wife
 4 when she was eleven or twelve.

5

6 **G. The Investigator Reports More Detailed Findings to Birchall**

7 64. In late August 2018, Mr.
 8 Howard told Mr. Birchall in telephone
 9 conversations that he learned that Mr.
 10 Unsworth spent significant time in Pattaya
 11 Beach, which is well known for
 12 prostitution and sex tourism, that Mr.
 13 Unsworth associated with other European
 14 expatriates who engaged in inappropriate
 15 sexual conduct in Thailand, and that that
 16 Mr. Unsworth was unpopular at the Thai
 17 Cave Rescue because others regarded him
 18 as “creepy.”

Birchall Decl. ¶ 17.

19 65. Before the evening of August
 20 30, 2018, Mr. Birchall had also relayed to
 21 Mr. Musk Mr. Howard’s findings that Mr.
 22 Unsworth met his wife when she was
 23 eleven or twelve, that Mr. Unsworth
 24 traveled to Thailand since the 1980s and
 25 that he frequented Pattaya Beach which is
 26 well known for prostitution and sex
 27 tourism, and that Mr. Unsworth was

Birchall Decl. ¶¶ 14-17, 19; Musk
 Decl. ¶ 35.

28

1 2 3	unpopular at the rescue site because other rescue workers thought that he was “creepy.”	
4 5 6 7	66. On August 30, 2018, Mr. Howard sent to Mr. Birchall a formal preliminary report of his investigation of Mr. Unsworth.	Birchall Decl. ¶ 18, Ex. E.
8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>67. Mr. Howard’s August 30, 2018 preliminary report included the following statements:</p> <ul style="list-style-type: none"> • “Mr. Unsworth has been a frequent visitor to Thailand since the 1980’s. Prior to meeting his current wife we believe that Mr. Unsworth was living in the Pattaya Beach...Pattaya Beach is synonymous with prostitution and scam artists. We are in the process of verifying this information which was mentioned to the lead investigator by Mr. Unsworth’s mother-in-law.” • “Mr. Unsworth has been described to our investigation team by other UK volunteers attached to the Cave Rescue team as a ‘Manther’ slang for an older man with a taste for younger women.” • “The sexpat whore-mongers his way 	Birchall Decl. ¶ 19, Ex. E.

1 through the go-go bars of Thailand.
 2 His only other friends are his sexpat
 3 peers. Peek-density occurs in and
 4 around Pattaya – Thailand’s sin city.”
 5 • “[S]ome of the UK and Dutch divers
 6 who also volunteered stated that Mr.
 7 Unsworth was not a popular or
 8 particularly liked man in the Cave
 9 Rescue Team. When pushed as to
 10 why, they simply replied ‘Creepy’.”
 11 • “Mr. Unsworth is an unpopular
 12 loner.”

13 68. An employee of one of Mr.
 14 Musk’s companies who was present at the
 15 Thai Cave Rescue, informed Mr. Musk
 16 that the dive team did not want Mr.
 17 Unsworth at the rescue site.

Lifrak Decl. Ex. 2 (Musk Depo.
 247:24-248:16); Musk Decl. ¶ 37.

19 **H. Mr. Musk’s “Off-the-Record” Emails to BuzzFeed**

20 69. On August 6, 2018, counsel
 21 for Mr. Unsworth allegedly sent a demand
 22 letter to Mr. Musk.

Compl. Ex. H.

23 70. On August 29, 2018, counsel
 24 for Mr. Unsworth publicly tweeted a copy
 25 of his demand letter to Mr. Musk’s twitter
 26 account.

Lifrak Decl. Ex. 22.

1	71. On August 29, 2018, Ryan	Musk Decl. ¶ 40, Ex. L.
2	Mac, a reporter with BuzzFeed News,	
3	emailed Mr. Musk seeking a comment for	
4	a story about a demand letter sent by Mr.	
5	Unworth's counsel to Mr. Musk.	
6	72. On the evening of August 30, 2018 Mr. Mac sent a follow up email to	Musk Decl. ¶ 41, Ex. L.
7	Mr. Musk.	
8	73. On August 30, 2018, Mr. Musk sent two emails to Mr. Mac.	Musk Decl. ¶ 42, Exs. L-M.
9		
10	74. Mr. Musk's first email to Mr. Mac stated "Off the record" at the top of the message.	Musk Decl. ¶ 43, Ex. L.
11		
12	75. Mr. Musk did not authorize BuzzFeed to publish his email or its contents.	Lifrak Decl. Ex. 2 (Musk Depo. 173:23-175:11); Musk Decl. ¶ 43.
13		
14	76. Mr. Musk did not intend for BuzzFeed to publish the contents of his email, especially without independent verification.	Lifrak Decl. Ex. 2 (Musk Depo. 173:23-175:11); Musk Decl. ¶ 43.
15		
16	77. In his first email to Mr. Mac, Mr. Musk told him to "call people you know in Thailand, find out what's actually going on."	Musk Decl. Ex. L.
17		
18	78. Mr. Musk wrote in the first email to Mr. Mac "stop defending child rapists."	Musk Decl. ¶ 44, Ex. L.
19		
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1 2 3 4	79. Mr. Musk's statement that Mr. Unsworth was a "child rapist" was based on information relayed to him by Mr. Birchall.	Musk Decl. ¶ 44; Lifrak Decl. Ex. 2 (Musk Depo. 176:4-24).
5 6 7 8 9 10	80. In his first email to Mr. Mac, Mr. Musk wrote that Mr. Unsworth had been "traveling to or living in Thailand for 30 to 40 years, mostly Pattaya Beach, until moving to Chiang Rai for a child bride that was about 12 years old at the time."	Musk Decl. ¶ 45, Ex. L.
11 12 13 14 15 16 17 18	81. Mr. Musk's statement that Mr. Unsworth had been "traveling to or living in Thailand for 30 to 40 years, mostly Pattaya Beach, until moving to Chiang Rai for a child bride that was about 12 years old at the time" was based on information relayed to him by Mr. Birchall.	Musk Decl. ¶ 45; Lifrak Decl. Ex. 2 (Musk Depo. 62:8-64:15).
19 20 21 22 23 24	82. Mr. Musk also wrote in his first email to Mr. Mac on August 30, 2018 that "there's only one reason people go to Pattaya Beach. It isn't where you go for caves, but it is where you'd go for something else."	Musk Decl. ¶ 46, Ex. L.
25 26 27 28	83. Mr. Musk's statement that "there's only one reason people go to Pattaya Beach. It isn't where you go for	Musk Decl. ¶ 46; Lifrak Decl. Ex. 2 (Musk Depo. 62:8-64:15).

1	caves, but it is where you'd go for	
2	something else" was based on information	
3	relayed to him by Mr. Birchall.	
4	84. Mr. Musk also wrote "Chiang	Musk Decl. ¶ 47, Ex. L.
5	Rai is renowned for child sex-trafficking."	
6	85. Mr. Musk's statement was	Musk Decl. ¶ 47, Ex. L.
7	supported by and consistent with a Google	
8	search that he also provided in the email.	
9	86. Mr. Musk also wrote that	Musk Decl. ¶ 48, Ex. L.
10	"most of the actual dive team refused to	
11	hang out with [Mr. Unsworth]."	
12	87. Mr. Musk's statement that	Musk Decl. ¶ 48.
13	"most of the actual dive team refused to	
14	hang out with [Mr. Unsworth]" was	
15	consistent with and based on information	
16	relayed to him by Mr. Birchall and his	
17	employee.	
18	88. Mr. Musk did not know or	Musk Decl. ¶ 49.
19	believe that any statements in his first	
20	email to Mr. Mac were false; nor did he	
21	entertain any serious doubts as to their	
22	truth.	
23	89. Mr. Musk's second email to	Musk Decl. ¶ 50, Ex. M.
24	Mr. Mac on August 30, 2018 stated "On	
25	background" at the top of the message.	
26	90. Mr. Musk wrote in the	Musk ¶ 51, M.
27	second email to Mr. Mac on August 30,	
28		

1	2018 that he “[n]ever saw Mr. Unsworth 2 at any point. Was told he was banned 3 from the site.”	
4	91. Mr. Musk’s statement that he 5 “[n]ever saw Mr. Unsworth at any point. 6 Was told he was banned from the site” 7 was consistent with his own observations 8 and based on information told to him by 9 an employee of one of his companies.	Lifrak Decl. Ex. 2 (Musk Depo. 247:24-248:16); Musk Decl. ¶ 51.
10	92. Mr. Musk did not know or 11 believe that the statement that he “[n]ever 12 saw Mr. Unsworth at any point. Was told 13 he was banned from the site” was false; 14 nor did he entertain any serious doubts as 15 to its truth.	Musk Decl. ¶ 52.
16	93. Mr. Musk sent the 17 information that he learned through Mr. 18 Birchall and Mr. Howard to BuzzFeed so 19 that BuzzFeed could conduct its own 20 investigation into Mr. Unsworth to 21 corroborate the information.	Lifrak Decl. Ex. 2 (Musk Depo. 173:23-175:11); Musk Decl. ¶ 53.
22	94. On September 4, 2018, Mr. 23 Mac responded to Mr. Musk’s August 30, 24 2018 emails.	Musk Decl. ¶ 54, Ex. L.
25	95. In his first email to Mr. Musk 26 on September 4, 2018, Mr. Mac stated, 27 among other things, that he “didn’t agree	<i>Id.</i>

28

1 2 3 4	for the conversation to be off the record” and he “tried to report out some of the accusations on [his] own but have not found anything to corroborate the claims.”	
5 6 7 8 9 10 11 12 13 14 15 16	96. On September 4, 2018, Mr. Musk responded in an email to Mr. Mac that “We haven’t had a conversation at all. I sent you an off the record email, which very clearly and unambiguously said, ‘off the record.’ If you want to publish off the record comments and destroy your journalistic credibility, that’s up to you. As for answering more questions, I would be happy to do so, but not with someone who just told me that they will not honor accepted rules of journalism.”	Musk Decl. ¶ 55, Ex. L.
17 18 19 20 21 22 23	97. Mr. Mac’s suggestion that that a positive confirmation from a reporter is required before a communication can be deemed off the record is “not consistent” with Mr. Musk’s prior numerous off-the-record interactions with reporters in the past.	Lifrak Decl. Ex. 2 (Musk Depo. 171:2-172:16); Musk Decl. ¶ 56-57.
24 25 26 27 28	98. Mr. Musk believed and understood, based on numerous off-the-record interactions with reporters in the past, that by designating his emails to Mr. Mac as “off the record” or “on	Musk Decl. ¶ 56.

1	background” their contents would not be published.	
3	99. On July 15, 2018, Mr. Unsworth forwarded an email between himself and Richard Stanton to a BBC reporter. The first line of Mr. Unsworth’s email to the BBC reporter stated “[f]or your eyes only and not to be reported on!!!” In deposition, Mr. Unsworth agreed that by including this language he was “telling [the BBC reporter] that he was not to include this information in a story.”	Lifrak Decl. Ex. 2 (Unsworth Depo. 78:13-79:19); Ex. 23.
14	100. The BuzzFeed News Standards and Ethics Guide in effect on August 30, 2018 and September 4, 2018 did not require that a reporter and source reach an agreement before information is treated as “off-the-record.”	Lifrak Decl. Ex. 24.
20	101. In November 2018, two months after Mr. Musk exchanged emails with Mr. Mac, BuzzFeed updated the BuzzFeed News Standards and Ethics Guide to add the following language to its section on anonymous sources: “Interviews are always on the record until a reporter agrees to go off the record or on	Lifrak Decl. Ex. 25.

1	background.” This policy did not exist at 2 the time that Mr. Musk exchanged emails 3 with Mr. Mac.	
4	102. BuzzFeed’s Standards and 5 Ethics Guide in effect on August 30, 2018 6 and September 4, 2018 stated: 7 “Information — excluding common 8 knowledge — should come from a 9 verified source.”	Lifrak Decl. Ex. 24.
10	103. On September 4, 2018, 11 BuzzFeed published a story that reprinted 12 Mr. Musk’s off-the-record and on 13 background emails in their entirety.	Compl., Ex. K; Lifrak Decl. Ex. 26.
14	104. On September 17, 2018, Mr. 15 Unsworth filed the instant action in this 16 Court.	<i>See generally</i> , Compl.
17	I. <u>Mr. Unsworth Sues</u>	
18		
19	105. Mr. Unsworth’s September 20 17, 2018 Complaint – the operative 21 pleading in this case – lists the following 22 exhibits to the Complaint as the “false and 23 defamatory accusations” published by Mr. 24 Musk: “Exhibits B [first July 15 tweet], C 25 [second July 15 tweet], D [third July 15 26 tweet], E [fourth July 15 tweet], F [July 18 27 apology tweet], G [July 18 apology tweet],	Compl. ¶ 113.
28		

I [July 28 tweet], and K [BuzzFeed September 4 article].”

CONCLUSIONS OF LAW

Based on the uncontroverted facts, the following conclusions of law should be reached:

A. Applicable Standards

8 1. “The purpose of summary judgment is to avoid unnecessary trials when
9 there is no dispute as to the facts before the court.” *Northwest Motorcycle Ass’n v.*
10 *U.S. Dep’t of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994).

11 2. “The court shall grant summary judgment if the movant shows that there
12 is no genuine dispute as to any material fact and the movant is entitled to judgment as
13 a matter of law.” Fed. R. Civ. P. 56(a).

14 3. A court should enter summary judgment “against a party who fails to
15 make a showing sufficient to establish the existence of an element essential to that
16 party’s case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

17 4. A party cannot avoid summary judgment if its “evidence is merely
18 colorable, . . . or is not significantly probative”; “[t]he mere existence of a scintilla of
19 evidence . . . will be insufficient.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,
20 249-50, 252 (1986). Although the facts must be viewed in the light most favorable to
21 the non-moving party, that party “is entitled to the benefit of only *reasonable*
22 inferences that may be drawn from the evidence put forth.” *Ackerman v. W. Elec.*
23 Co., 860 F.2d 1514, 1520 (9th Cir. 1988) (citation omitted). Moreover, “mere
24 allegation and speculation do not create a factual dispute for purposes of summary
25 judgment.” *Loomis v. Cornish*, 836 F.3d 991, 997 (9th Cir. 2016).

26 5. The Court may also grant summary judgment as to one of many claims,
27 or a part of a claim. *Wang Labs., Inc. v. Mitsubishi Elecs. Am., Inc.*, 860 F. Supp.
28 1448, 1450 (C.D. Cal. 1993); *Kramer v. Thomas*, 2006 WL 4729242, at *4 (C.D. Cal.

1 Sept. 28, 2006); *see also* Fed. R. Civ. P. 56(a) (permitting partial summary judgment
 2 on a claim or part of a claim). “The standards and procedures for granting partial
 3 summary judgment . . . are the same as those for summary judgment.” *Campbell v.*
 4 *Vitran Express Inc.*, 2016 WL 873009, at *3 (C.D. Cal. Mar. 2, 2016).

5 6. Even when the Court does not grant all the relief requested, it may enter
 6 an order stating any material fact that it finds to not be genuinely in dispute and
 7 treating that fact as established in the case. *See* Fed. R. Civ. P. 56(g).

8 7. Summary judgment is a “favored remedy” in defamation cases involving
 9 the issue of “actual malice” under the standard set forth in *New York Times Co. v.*
 10 *Sullivan*, 376 U.S. 254 (1964). *See Reader's Digest Assn. v. Superior Court*, 37 Cal.
 11 3d 244, 252 (1984).

12 **B. Because Mr. Unsworth Is a Limited Purpose Public Figure,**
 13 **a Defamation Claim Requires Actual Malice.**

14 8. Defamation claims brought by “limited purpose public figures” or
 15 “vortex” public figures are subject to the *New York Times* “actual malice” standard.
 16 *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342-43, 351 (1974); *Reader's Digest*, 37
 17 Cal. 3d at 253.

18 9. Limited purpose public figures are persons who voluntarily inject
 19 themselves into a public controversy and “become[] public figure[s] for a limited
 20 range of issues” related to that controversy. *Gertz*, 418 U.S. at 351.

21 10. A plaintiff is a limited purpose public figure if 1) there is a public
 22 controversy, (2) the plaintiff voluntarily injects himself into and/or seeks to influence
 23 the resolution of the public controversy, (3) the alleged defamatory statement is
 24 “germane” to the plaintiff’s participation in the controversy. *See Copp v. Paxton*, 45
 25 Cal. App. 4th 829, 846 (1996).

26 11. Determining whether a plaintiff is a limited purpose public figure
 27 requires an analysis of the totality of the circumstances of a particular controversy

1 and is a question of law that must be resolved by the court. *See Reader's Digest*, 37
 2 Cal. 3d at 255; *see also Khawar v. Globe Int'l, Inc.*, 19 Cal. 4th 254, 264 (1998).

3 12. A public controversy is a dispute that is “debated publicly” and has
 4 “foreseeable and substantial ramifications for nonparticipants” of the debate. *See*
 5 *Annette F. v. Sharon S.*, 119 Cal. App. 4th 1146, 1164 (2004) (citing *Waldbaum v.*
 6 *Fairchild Publications, Inc.*, 627 F.2d 1287, 1297 (D.C. Cir. 1980)); *see also Makaeff*
 7 *v. Trump Univ., LLC*, 715 F.3d 254, 267 (9th Cir. 2013) (“a public controversy must
 8 be a real dispute, the outcome of which affects the general public or some segment of
 9 it.”).

10 13. Aspects of the cave rescue were a public controversy as it was the
 11 subject of a much covered public debate and it had substantial ramifications for
 12 nonparticipants. *See Copp*, 45 Cal. App. 4th at 846 (debate over future earthquake
 13 disaster mitigation had foreseeable and substantial ramifications for nonparticipants);
 14 *Ampex Corp. v. Cargle*, 128 Cal. App. 4th 1569, 1577-78 (2005) (debate over
 15 publicly traded company had foreseeable and substantial ramifications for
 16 nonparticipant shareholders).

17 14. A person becomes a limited purpose public figure when he “undertake[s]
 18 some *voluntary* act through which he seeks to influence the resolution of the public
 19 issues involved,” *Reader's Digest*, 37 Cal. 3d at 254, such as voluntarily giving
 20 interviews with the press about a public controversy. *See Denney v. Lawrence*, 22
 21 Cal. App. 4th 927, 935–36 (1994) (plaintiff was limited purpose public figure
 22 because he volunteered to give press interviews promoting his own version of events
 23 regarding a murder); *Rudnick v. McMillan*, 25 Cal. App. 4th 1183, 1190 (1994)
 24 (plaintiff became a limited purpose public figure by inviting the press to write stories
 25 about him).

26 15. Mr. Unsworth became a limited purpose public figure on issues relating
 27 to the Thai Cave Rescue and Mr. Musk’s involvement by giving a number of
 28 interviews to the press, including his July 13, 2018 interview with CNN in which he

1 discussed Mr. Musk's involvement in the rescue efforts and motivations. *See*
 2 *Denney*, 22 Cal. App. 4th at 935-36; *see also Nadel v. Regents of University of*
 3 *California*, 28 Cal. App. 4th 1251, 1269 (1994) (plaintiff who gave published quotes
 4 and interviews to the press about a public controversy was a limited public figure).

5 16. Where a limited purpose public figure inserts himself into a public
 6 controversy and uses his position, expertise, or credentials to influence public
 7 opinion, his background, “talents, education, experience, and motives” become
 8 germane to the controversy as “they could have been relevant to the public’s decision
 9 whether to listen to him.” *Waldbaum*, 627 F.2d at 1298; *see also Copp*, 45 Cal. App.
 10 4th at 846 (“Where the issue turns on expert or specialized knowledge, the plaintiff’s
 11 own credentials assume such relevance to the controversy”).

12 17. Accordingly, Mr. Musk’s allegedly defamatory statements about Mr.
 13 Unsworth – which related to Mr. Unsworth’s efforts, character, credibility, and
 14 motives for participating in the rescue – were “germane” to the public controversy, as
 15 they were “relevant to the public’s decision whether to listen to” Mr. Unsworth.
 16 *Waldbaum*, 627 F.2d at 1298. They were also related “to understanding [plaintiff’s]
 17 role and why he wanted to be involved in the [controversy].” *Jankovic v. Int’l Crisis*
 18 *Grp.*, 822 F.3d 576, 589 (D.C. Cir. 2016).

19 18. Under the totality of the circumstances, Mr. Unsworth is a public figure
 20 for issues relating to the Thai Cave Rescue and Mr. Musk’s involvement in the
 21 rescue, and Mr. Musk’s statements about Mr. Unsworth are germane to those issues.
 22 *See e.g.*, *Copp*, 45 Cal. App. 4th at 846.

23 19. Limited purpose public figures must establish by clear and convincing
 24 evidence that the alleged defamatory statement was made with “actual malice.” *New*
 25 *York Times*, 376 U.S. at 280; *Christian Research Inst. v. Alnor*, 148 Cal. App. 4th 71,
 26 84 (2007).

27 20. “The burden of proof by clear and convincing evidence ‘requires a
 28 finding of high probability. The evidence must be so clear as to leave no substantial

1 doubt. It must be sufficiently strong to command the unhesitating assent of every
 2 reasonable mind.”” *Copp*, 45 Cal. App. 4th at 846.

3 21. The clear and convincing evidence standard applies on summary
 4 judgment; the Court may find that “no triable issues” exist and grant this motion
 5 “unless it appears that actual malice may be proved at trial by clear and convincing
 6 evidence.” *Reader’s Digest*, 37 Cal. 3d. at 245; *see also D.A.R.E Am. v. Rolling*
 7 *Stone Magazine*, 101 F. Supp. 2d 1270, 1278 (C.D. Cal. 2000), *aff’d sub*
 8 *nom. D.A.R.E. Am. v. Rolling Stone Magazine*, 270 F.3d 793 (9th Cir. 2001) (same).

9 22. To establish actual malice, the plaintiff must prove by clear and
 10 convincing evidence that the defendant made the statements at issue “with knowledge
 11 that [they were] false or with reckless disregard of whether [they were] false or not.”
 12 *New York Times*, 376 U.S. at 279-80. This test is *subjective*, not objective. *See e.g.*,
 13 *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964); *St. Amant v. Thompson*, 390 U.S. 727,
 14 731-32 (1968) (actual malice requires “sufficient evidence to permit the conclusion
 15 that the *defendant in fact* entertained serious doubts as to the truth of his
 16 publication.”) (emphasis added).

17 23. “The *New York Times Co. v. Sullivan* standard does not require that the
 18 reporter hold a devout belief in the truth of the story being reported, only that he or
 19 she refrain from either reporting a story he or she *knows* to be false or acting in
 20 reckless disregard of the truth.” *Jackson v. Paramount Pictures Corp.*, 68 Cal. App.
 21 4th 10, 35–36 (1998).

22 24. The mere failure to fully investigate a report does not on its own give
 23 rise to actual malice, rather the “failure to investigate must fairly be characterized as
 24 the purposeful avoidance of the truth or the product of a deliberate decision not to
 25 acquire knowledge of facts that might confirm the probable falsity of [the subject]
 26 charges.” *Rosenaur v. Scherer*, 88 Cal. App. 4th 260, 277 (2001).

27 25. Gross negligence or the careless misinterpretation of information does
 28 not give rise to actual malice either. *See Christian Research*, 148 Cal. App. 4th at 88

1 (“Alnor might have carelessly interpreted Debra’s statement, but this would not
 2 establish malice. ‘Gross or even extreme negligence will not suffice to establish
 3 actual malice; the defendant must have made the statement with knowledge that the
 4 statement was false or with ‘actual doubt concerning the truth of the publication.’’”).

5 **C. The BuzzFeed Article Is Not Defamation by Mr. Musk**

6 26. Mr. Unsworth cannot prove by clear and convincing evidence that Mr.
 7 Musk’s alleged defamatory statements in his August 30, 2018 emails to Ryan Mac
 8 were made with actual malice as Mr. Musk was repeating reports he received (via a
 9 trusted aide) from an investigator he retained to investigate Mr. Unsworth, and there
 10 is no evidence that Mr. Musk knew that these statements were false or entertained
 11 serious doubts as to their truth. *See e.g., Reader’s Digest*, 37 Cal. 3d. at 252 (finding
 12 no actual malice where defendant published information obtained from a third party
 13 source); *Christian Research*, 148 Cal. App. 4th at 91 (no actual malice where
 14 information was purportedly obtained from an effectively anonymous source in the
 15 postal inspector’s office). Mr. Unsworth’s defamation claim as to the August 30,
 16 2018 off-the-record emails fails as a matter of law.

17 27. A defendant is not liable for the repetition or republication of a
 18 defamatory remark unless the republication was authorized or reasonably foreseeable.
 19 *Shively v. Bozanich*, 31 Cal. 4th 1230, 1243 (2003) (“repetition by a new party of
 20 another person’s earlier defamatory remark also gives rise to a separate cause of
 21 action for defamation against the *original defamer*, when the repetition was
 22 reasonably foreseeable”); *DiGiorgio Corp. v. Valley Labor Citizen*, 260 Cal. App. 2d
 23 268, 273 (1968) (same); *Curley v. Vick*, 211 Cal. App. 2d 670, 672–73 (1963) (same).

24 28. As a matter of law, it was not reasonably foreseeable that BuzzFeed
 25 would unilaterally publish Mr. Musk’s August 30 communications that were labeled
 26 off-the-record instead of independently verifying the information before publishing it.
 27 *See e.g., Curley*, 211 Cal. App. 2d at 672-73. BuzzFeed’s own policies require that
 28 information be verified before it is published, and in Mr. Musk’s countless

1 interactions with reporters the designation of communications as “off-the-record” has
 2 been honored.

3 **D. Mr. Musk’s Tweets Do Not Constitute Defamation.**

4 29. Mr. Musk’s July 15, 2018 tweets “could be construed as *either* fact or
 5 opinion,” Order on Defendant’s Motion to Dismiss; Dkt. 42, at 13 fn. 9 (emphasis in
 6 original).

7 30. Where statements can be “can reasonably be viewed as either fact or
 8 opinion,” to establish a claim for defamation, the plaintiff must prove by clear and
 9 convincing evidence “not only that the words were reasonably understood in their
 10 defamatory, factual sense, but also that the defendant either deliberately cast his
 11 statements in an equivocal fashion in the hope of insinuating a defamatory import to
 12 the reader, or that he knew or acted in reckless disregard of whether his words would
 13 be interpreted by the average reader as defamatory statements of fact.” *Good Gov’t*
 14 *Grp. of Seal Beach, Inc. v. Superior Court.* 22 Cal. 3d 672, 684 (1978). This is a
 15 subjective standard. *Id.*; *see also De Havilland v. FX Networks, LLC*, 21 Cal. App.
 16 5th 845, 870 (2018) (“because actual malice is a ‘deliberately subjective’ test,
 17 liability cannot be imposed for an implication that merely ‘should have been
 18 foreseen.’”).

19 31. Mr. Unsworth has failed to provide evidence that Mr. Musk subjectively
 20 intended for his July 15, 2018 alleged defamatory statements about Mr. Unsworth –
 21 Mr. Musk’s insults that Mr. Unsworth was “sus” and a “pedo guy” – to be interpreted
 22 as a statement of fact or that he entertained serious doubts as to whether they would
 23 be interpreted as such. *See Good Gov’t Grp. of Seal Beach, Inc.*, 22 Cal. 3d at 684.
 24 Mr. Musk’s testimony establishes otherwise and therefore Mr. Unsworth’s
 25 defamation claims as to the July 15, 2018 tweets fail as a matter of law. *See id.*

26 32. Mr. Unsworth’s defamation claim as to the July 15, 2018 tweets also
 27 fails as a matter of law because he cannot establish that Mr. Musk’s tweets were
 28 written with actual malice. Mr. Musk made these statements after learning that he

1 was an older Caucasian man from the United Kingdom who lived in an area of
2 Thailand known as the “child sex trafficking capital of the world.” Mr. Unsworth
3 cannot establish that Mr. Musk knew that his tweets were false or entertained serious
4 doubts as to their truth. *Christian Research*, 148 Cal. App. 4th at 91 (absence of
5 evidence of serious doubt as to the truth of the statements and failure to conduct
6 additional investigation was not sufficient to establish actual malice); *Rosenaur*, 88
7 Cal. App. 4th at 277 (same); *Annette F.*, 119 Cal. App. 4th at 1167 (“Gross or even
8 extreme negligence will not suffice to establish actual malice”).

9 33. Mr. Unsworth cannot prove by clear and convincing evidence that Mr.
10 Musk's August 28, 2018 tweet referencing Mr. Unsworth was made with actual
11 malice as it was sent after Mr. Musk received reports from an investigator regarding
12 Mr. Unsworth, and there is no evidence that Mr. Musk knew that these statements
13 were false or entertained serious doubts as to their truth. *See e.g., Reader's Digest*,
14 37 Cal. 3d. at 252 (finding no actual malice where defendant published information
15 obtained from a third party source); *Christian Research*, 148 Cal. App. 4th at 91 (no
16 actual malice where information was purportedly obtained from an effectively
17 anonymous source in the postal inspector's office). Mr. Unsworth's defamation
18 claim as to the August 28, 2018 tweet fails as a matter of law.

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